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AMENDED IN ASSEMBLY MAY 27, 2016

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AMENDED IN ASSEMBLY APRIL 13, 2016

AMENDED IN ASSEMBLY MARCH 31, 2016

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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2591**

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**Introduced by Assembly Member Dababneh**  
**(Coauthors: Assembly Members Travis Allen, Cristina Garcia,**  
**O'Donnell, Olsen, and Wilk)**  
**(Coauthor: Senator Bates)**

February 19, 2016

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An act to repeal and amend Section 1633.3 of the Civil Code, and to amend and add Section 38.6 of, and to repeal Section 38.5 of, the Insurance Code, relating to insurance.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2591, as amended, Dababneh. Insurance: electronic transmission.

Existing law generally requires, with exceptions, that specified provisions of the Civil Code apply to electronic records and electronic signatures relating to a transaction.

This bill would remove various notices, including a policy *change or* cancellation notice by the named insured and a written notice of

nonrenewal of the policy from the above exemptions, making those notices subject to the specified provisions of the Civil Code. The bill, commencing January 1, 2021, would reinstate certain exemptions of those notices from the specified provisions of the Civil Code.

Existing law generally requires that any required notice related to insurance transactions be made by mail. Existing law authorizes an insurer, under specified conditions, to provide by electronic transmission the required offer of renewal for automobile insurance, the required notice of conditional renewal for commercial insurance, the required offer of coverage or renewal or any disclosure required regarding earthquake insurance, and the offer of renewal for a workers' compensation policy.

The bill would, ~~until January 1, 2021~~, for the above-specified records, authorize *additional* persons ~~in addition to the insurer to send those records by electronic transmission by providing that an agent, broker, or any other person~~ licensed by the Department of Insurance ~~may to~~ send those records electronically, as specified. The bill, as of January 1, 2021, would no longer authorize the notice of conditional renewal for commercial insurance to be sent electronically. *As of January 1, 2021, the bill would permit a notice of lapse, nonrenewal, cancellation, or termination, as specified, to be transmitted electronically if it is also transmitted by mail, as prescribed by statute.*

~~Existing law prohibits an insurer, relating to any insurance on risks or on operations in this state, including reinsurance, life insurance, insurance of vessels or craft, title insurance, and disability insurance, from sending a written notice by electronic transmission.~~

~~This bill would repeal the above prohibition, thereby allowing an insurer, relating to any insurance on risks or on operations in this state, including reinsurance, life insurance, insurance of vessels or craft, title insurance, and disability insurance, to send a written notice by electronic transmission.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1633.3 of the Civil Code, as amended
- 2 by Section 1.5 of Chapter 638 of the Statutes of 2015, is repealed.

1 SEC. 2. Section 1633.3 of the Civil Code, as amended by  
2 Section 2.5 of Chapter 638 of the Statutes of 2015, is amended to  
3 read:

4 1633.3. (a) Except as otherwise provided in subdivisions (b)  
5 and (c), this title applies to electronic records and electronic  
6 signatures relating to a transaction.

7 (b) This title does not apply to transactions subject to the  
8 following laws:

9 (1) A law governing the creation and execution of wills, codicils,  
10 or testamentary trusts.

11 (2) Division 1 (commencing with Section 1101) of the Uniform  
12 Commercial Code, except Sections 1206 and 1306.

13 (3) Divisions 3 (commencing with Section 3101), 4  
14 (commencing with Section 4101), 5 (commencing with Section  
15 5101), 8 (commencing with Section 8101), 9 (commencing with  
16 Section 9101), and 11 (commencing with Section 11101) of the  
17 Uniform Commercial Code.

18 (4) A law that requires that specifically identifiable text or  
19 disclosures in a record or a portion of a record be separately signed,  
20 including initialed, from the record. However, this paragraph does  
21 not apply to Section 1677 or 1678 of this code or Section 1298 of  
22 the Code of Civil Procedure.

23 (c) This title does not apply to any specific transaction described  
24 in Section 17511.5 of the Business and Professions Code, Section  
25 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7,  
26 or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of  
27 Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14,  
28 1789.16, or 1793.23 of, Chapter 1 (commencing with Section  
29 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5,  
30 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i,  
31 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section  
32 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section  
33 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981)  
34 or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of  
35 Division 3 of, Section 3071.5 of Part 5 (commencing with Section  
36 4000) of Division 4 of, or Part 5.3 (commencing with Section  
37 6500) of Division 4 of this code, subdivision (b) of Section 18608  
38 or Section 22328 of the Financial Code, Section 1358.15, 1365,  
39 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code,  
40 Section 786 as it applies to individual and group disability policies,

1 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 11624.09, or  
2 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482  
3 of the Public Utilities Code, or Section 9975 or 11738 of the  
4 Vehicle Code. An electronic record may not be substituted for any  
5 notice that is required to be sent pursuant to Section 1162 of the  
6 Code of Civil Procedure. Nothing in this subdivision shall be  
7 construed to prohibit the recordation of any document with a county  
8 recorder by electronic means.

9 (d) This title applies to an electronic record or electronic  
10 signature otherwise excluded from the application of this title under  
11 subdivision (b) when used for a transaction subject to a law other  
12 than those specified in subdivision (b).

13 (e) A transaction subject to this title is also subject to other  
14 applicable substantive law.

15 (f) The exclusion of a transaction from the application of this  
16 title under subdivision (b) or (c) shall be construed only to exclude  
17 the transaction from the application of this title, but shall not be  
18 construed to prohibit the transaction from being conducted by  
19 electronic means if the transaction may be conducted by electronic  
20 means under any other applicable law.

21 (g) Notwithstanding subdivisions (b) and (c), this title shall  
22 apply to electronic records and electronic signatures relating to  
23 transactions conducted by a person licensed, certified, or registered  
24 pursuant to the Alarm Company Act (Chapter 11.6 (commencing  
25 with Section 7590) of Division 3 of the Business and Professions  
26 Code) for purposes of activities authorized by Section 7599.54 of  
27 the Business and Professions Code.

28 (h) This section shall remain in effect only until January 1, 2021,  
29 and as of that date is repealed, unless a later enacted statute, that  
30 is enacted before January 1, 2021, deletes or extends that date.

31 SEC. 3. Section 1633.3 of the Civil Code, as added by Section  
32 3.5 of Chapter 638 of the Statutes of 2015, is amended to read:

33 1633.3. (a) Except as otherwise provided in subdivisions (b)  
34 and (c), this title applies to electronic records and electronic  
35 signatures relating to a transaction.

36 (b) This title does not apply to transactions subject to the  
37 following laws:

38 (1) A law governing the creation and execution of wills, codicils,  
39 or testamentary trusts.

(2) Division 1 (commencing with Section 1101) of the Uniform Commercial Code, except Sections 1206 and 1306.

(3) Divisions 3 (commencing with Section 3101), 4 (commencing with Section 4101), 5 (commencing with Section 5101), 8 (commencing with Section 8101), 9 (commencing with Section 9101), and 11 (commencing with Section 11101) of the Uniform Commercial Code.

(4) A law that requires that specifically identifiable text or disclosures in a record or a portion of a record be separately signed, including initialed, from the record. However, this paragraph does not apply to Section 1677 or 1678 of this code or Section 1298 of the Code of Civil Procedure.

(c) This title does not apply to any specific transaction described in Section 17511.5 of the Business and Professions Code, Section 56.11, 56.17, 798.14, 1133, or 1134 of, Section 1689.6, 1689.7, or 1689.13 of, Chapter 2.5 (commencing with Section 1695) of Title 5 of Part 2 of Division 3 of, Section 1720, 1785.15, 1789.14, 1789.16, or 1793.23 of, Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of, Section 1861.24, 1862.5, 1917.712, 1917.713, 1950.6, 1983, 2924b, 2924c, 2924f, 2924i, 2924j, 2924.3, or 2937 of, Article 1.5 (commencing with Section 2945) of Chapter 2 of Title 14 of Part 4 of Division 3 of, Section 2954.5 or 2963 of, Chapter 2b (commencing with Section 2981) or 2d (commencing with Section 2985.7) of Title 14 of Part 4 of Division 3 of, Section 3071.5 of Part 5 (commencing with Section 4000) of Division 4 of, or Part 5.3 (commencing with Section 6500) of Division 4 of this code, subdivision (b) of Section 18608 or Section 22328 of the Financial Code, Section 1358.15, 1365, 1368.01, 1368.1, 1371, or 18035.5 of the Health and Safety Code, Section 662, paragraph (2) of subdivision (a) of Section 663, *Section 664, 673, or 677, ~~678.1~~, paragraph (2) of subdivision (a) of Section 678, Section 678.1 or 786, paragraph (2) of subdivision (a) of Section 10086, or Section 10113.7, 10127.7, 10127.9, 10127.10, 10192.18, 10199.44, 10199.46, 10235.16, 10235.40, 10509.4, 10509.7, 11624.09, or 11624.1 of the Insurance Code, Section 779.1, 10010.1, or 16482 of the Public Utilities Code, or Section 9975 or 11738 of the Vehicle Code. An electronic record may not be substituted for any notice that is required to be sent pursuant to Section 1162 of the Code of Civil Procedure. Nothing*

1 in this subdivision shall be construed to prohibit the recordation  
2 of any document with a county recorder by electronic means.

3 (d) This title applies to an electronic record or electronic  
4 signature otherwise excluded from the application of this title under  
5 subdivision (b) when used for a transaction subject to a law other  
6 than those specified in subdivision (b).

7 (e) A transaction subject to this title is also subject to other  
8 applicable substantive law.

9 (f) The exclusion of a transaction from the application of this  
10 title under subdivision (b) or (c) shall be construed only to exclude  
11 the transaction from the application of this title, but shall not be  
12 construed to prohibit the transaction from being conducted by  
13 electronic means if the transaction may be conducted by electronic  
14 means under any other applicable law.

15 (g) Notwithstanding subdivisions (b) and (c), this title shall  
16 apply to electronic records and electronic signatures relating to  
17 transactions conducted by a person licensed, certified, or registered  
18 pursuant to the Alarm Company Act (Chapter 11.6 (commencing  
19 with Section 7590) of Division 3 of the Business and Professions  
20 Code) for purposes of activities authorized by Section 7599.54 of  
21 the Business and Professions Code.

22 (h) This section shall become operative on January 1, 2021.

23 SEC. 4. Section 38.5 of the Insurance Code, as amended by  
24 Section 4 of Chapter 369 of the Statutes of 2013, is repealed.

25 SEC. 5. Section 38.5 of the Insurance Code, as added by  
26 Section 5 of Chapter 369 of the Statutes of 2013, is repealed.

27 SEC. 6. Section 38.6 of the Insurance Code is amended to read:

28 38.6. (a) (1) Any written record required to be given or mailed  
29 to any person by a licensee, including an offer of renewal required  
30 by Sections 663 and 678, the notice of policy change or  
31 cancellation requested by the insured as required by Section 667.5,  
32 the notice of conditional renewal required by Section 678.1, the  
33 offer of coverage or renewal or any disclosure required by Section  
34 10086, the offer of renewal for a workers' compensation policy,  
35 Section 662, paragraph (2) of subdivision (a) of Section 663,  
36 Section 664, 667.5, 673, 677, paragraph (2) of subdivision (a) of  
37 Section 678, subdivisions (a) and (b) of Section 678.1, or any  
38 written record required to be given or mailed to any person by a  
39 licensee relating to the business of life insurance, as defined in  
40 Section 101 of this code may, if not excluded by subdivision (b)

1 or (c) of Section 1633.3 of the Civil Code, be provided by  
2 electronic transmission pursuant to Title 2.5 (commencing with  
3 Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each  
4 party has agreed to conduct the transaction by electronic means  
5 pursuant to Section 1633.5 of the Civil Code, and if the licensee  
6 complies with the provisions of this section. A valid electronic  
7 signature shall be sufficient for any provision of law requiring a  
8 written signature.

9 (2) For purposes of this section, the definitions set forth in  
10 Section 1633.2 of the Civil Code shall apply. The term “licensee”  
11 means an insurer, agent, broker, or any other person who is required  
12 to be licensed by the department.

13 (3) Notwithstanding subdivision (1) of Section 1633.2 of the  
14 Civil Code, for purposes of this section, “person” includes, but is  
15 not limited to, the policy owner, policyholder, applicant, insured,  
16 or assignee or designee of an insured.

17 (b) In order to transmit a record listed in subdivision (a)  
18 electronically, a licensee shall comply with all of the following:

19 (1) A licensee, or licensee’s representative, acquires the consent  
20 of the person to opt in to receive the record by electronic  
21 transmission, and the person has not withdrawn that consent, prior  
22 to providing the record by electronic transmission. A person’s  
23 consent may be acquired verbally, in writing, or electronically. If  
24 consent is acquired verbally, the licensee shall confirm consent in  
25 writing or electronically. The licensee shall retain a record of the  
26 person’s consent to receive the record by electronic transmission  
27 with the policy information so that it is retrievable upon request  
28 by the department while the policy is in force and for five years  
29 thereafter.

30 (2) A licensee discloses, in writing or electronically, to the  
31 person all of the following:

32 (A) The opt in to receive the record by electronic transmission  
33 is voluntary.

34 (B) That the person may opt out of receiving the record by  
35 electronic transmission at any time, and the process or system for  
36 the person to opt out.

37 (C) A description of the record that the person will receive by  
38 electronic transmission.

39 (D) The process or system to report a change or correction in  
40 the person’s email address.

1 (E) The licensee's contact information, which includes, but is  
2 not limited to, a toll-free number or the licensee's Internet Web  
3 site address.

4 (3) The opt-in consent disclosure required by paragraph (2) may  
5 be set forth in the application or in a separate document that is part  
6 of the policy approved by the commissioner and shall be bolded  
7 or otherwise set forth in a conspicuous manner. The person's  
8 signature shall be set forth immediately below the opt-in consent  
9 disclosure. If the licensee seeks consent at any time prior to the  
10 completion of the application, consent and signature shall be  
11 obtained before the application is completed. If the person has not  
12 opted in at the time the application is completed, the licensee may  
13 receive the opt-in consent at any time thereafter, pursuant to the  
14 same opt-in requirements that apply at the time of the application.  
15 The licensee shall retain a copy of the signed opt-in consent  
16 disclosure with the policy information so that each is retrievable  
17 upon request by the department while the policy is in force and  
18 for five years thereafter.

19 (4) The email address of the person who has consented to  
20 electronic transmission shall be set forth on the consent disclosure.  
21 In addition, if the person who consented receives an annual  
22 statement, the email address of the person who has consented shall  
23 be set forth on that record.

24 (5) The licensee shall annually provide one free printed copy  
25 of any record described in this subdivision upon request by the  
26 person.

27 (6) If a provision of this code requires a licensee to transmit a  
28 record by first-class mail, regular mail, does not specify a method  
29 of delivery, or is a record that is required to be provided pursuant  
30 to Article 6.6 (commencing with Section 791), and if the licensee  
31 is not otherwise prohibited from transmitting the record  
32 electronically under subdivision (b) of Section 1633.8 of the Civil  
33 Code, then the record may be transmitted by electronic transmission  
34 if the licensee complies with all of the requirements of Sections  
35 1633.15 and 1633.16 of the Civil Code.

36 (7) Notwithstanding subdivision (b) of Section 1633.8 of the  
37 Civil Code, if a provision of this code requires a licensee to  
38 transmit a record by return receipt, registered mail, certified mail,  
39 signed written receipt of delivery, or other method of delivery  
40 evidencing actual receipt by the person, and if the licensee is not



1 otherwise prohibited from transmitting the record electronically  
2 under Section 1633.3 of the Civil Code and the provisions of this  
3 section, then the licensee shall maintain a process or system that  
4 demonstrates proof of delivery and actual receipt of the record by  
5 the person consistent with this paragraph. The licensee shall  
6 document and retain information demonstrating delivery and actual  
7 receipt so that it is retrievable, upon request, by the department at  
8 least five years after the policy is no longer in force. The record  
9 provided by electronic transmission shall be treated as if actually  
10 received if the licensee delivers the record to the person in  
11 compliance with applicable statutory delivery deadlines. A licensee  
12 may demonstrate actual delivery and receipt by any of the  
13 following:

14 (A) The person acknowledges receipt of the electronic  
15 transmission of the record by executing an electronic signature.

16 (B) The record is posted on the licensee's secure Internet Web  
17 site, and there is evidence demonstrating that the person logged  
18 onto the licensee's secure Internet Web site and downloaded,  
19 printed, or otherwise acknowledged receipt of the record.

20 (C) The record is transmitted to the named insured through an  
21 application on a personal electronic device that is secured by  
22 password, biometric identifier, or other technology, and there is  
23 evidence demonstrating that the person logged into the application  
24 and viewed or otherwise acknowledged receipt of the record.

25 (D) If a licensee is unable to demonstrate actual delivery and  
26 receipt pursuant to this paragraph, the licensee shall resend the  
27 record by regular mail to the person in the manner originally  
28 specified by the underlying provision of this code.

29 (8) Notwithstanding any other law, a notice of lapse,  
30 nonrenewal, cancellation, or termination of any product subject to  
31 this section may be transmitted electronically if the licensee  
32 demonstrates proof of delivery as set forth in paragraph (7) and  
33 complies with the other provisions in this section.

34 (9) If the record is not delivered directly to the electronic address  
35 designated by the person but placed at an electronic address  
36 accessible to the person, a licensee shall notify the person in plain,  
37 clear, and conspicuous language at the electronic address  
38 designated by the person that describes the record, informs that  
39 person that it is available at another location, and provides  
40 instructions to the person as to how to obtain the record.

1 (10) (A) Upon a licensee receiving information indicating that  
2 the record sent by electronic transmission was not received by the  
3 person, the licensee shall, within five business days, comply with  
4 either clause (i) or (ii):

5 (i) Contact the person to confirm or update the person's email  
6 address and resend the record by electronic transmission. If the  
7 licensee elects to resend the record by electronic transmission, the  
8 licensee shall demonstrate the transmission was received by the  
9 person, pursuant to paragraph (6), (7), or (8). If the licensee is  
10 unable to confirm or update the person's email address, the licensee  
11 shall resend the record by regular mail to the licensee at the address  
12 shown on the policy, or, if the underlying statute requires delivery  
13 in a specified manner, send the record in that specified manner.

14 (ii) Resend the record initially provided by electronic  
15 transmission by regular mail to the insured at the address shown  
16 on the policy, or, if the underlying statute requires delivery in a  
17 specified manner, send the record in that specified manner.

18 (B) If the licensee sends the first electronic record within the  
19 time period required by law and the licensee complies with both  
20 paragraph (5) and subparagraph (A) of this paragraph, the record  
21 sent pursuant to clause (i) or (ii) of subparagraph (A) shall be  
22 treated as if mailed in compliance with the applicable statutory  
23 regular mail delivery deadlines.

24 (11) The licensee shall not charge any person who declines to  
25 opt in to receive a record through electronic transmission from  
26 receiving a record electronically. The licensee shall not provide a  
27 discount or an incentive to any person to opt in to receive electronic  
28 records.

29 (12) The licensee shall verify a person's email address via paper  
30 writing sent by regular mail when more than 12 months have  
31 elapsed since the licensee's last electronic communication.

32 (c) An insurance agent or broker acting under the direction of  
33 a party that enters into a contract by means of an electronic record  
34 or electronic signature shall not be held liable for any deficiency  
35 in the electronic procedures agreed to by the parties under that  
36 contract if all of the following are met:

37 (1) The insurance agent or broker has not engaged in negligent,  
38 reckless, or intentional tortious conduct.

39 (2) The insurance agent or broker was not involved in the  
40 development or establishment of the electronic procedures.

1 (3) The insurance agent or broker did not deviate from the  
2 electronic procedures.

3 (d) (1) On or before January 1, 2019, the commissioner shall  
4 submit a report to the Governor and to the committees of the Senate  
5 and Assembly having jurisdiction over insurance and the judiciary,  
6 regarding the impact and implementation of the authorization of  
7 the electronic transmission of certain insurance renewal offers,  
8 notices, or disclosures, relating to the business of life insurance,  
9 as authorized by this section. The report shall include input from  
10 insurers, consumers, and consumer organizations, and shall include  
11 an assessment of the department's experience pertaining to the  
12 authorization of the electronic transmission of insurance renewals,  
13 relating to the business of life insurance, as authorized by this  
14 section.

15 (2) On or before January 1, 2019, the commissioner shall submit  
16 a report to the Governor and to the committees of the Senate and  
17 Assembly having jurisdiction over insurance and the judiciary,  
18 regarding the impact and implementation of the authorization of  
19 the electronic transmission of certain insurance renewal offers,  
20 notices, or disclosures including an offer of renewal required by  
21 Sections 663 and 678, the notice of conditional renewal required  
22 by Section 678.1, the offer of coverage or renewal or any disclosure  
23 required by Section 10086, and the offer of renewal for a workers'  
24 compensation policy, as authorized by this section. The report  
25 shall include input from insurers, consumers, and consumer  
26 organizations, and shall include an assessment of the department's  
27 experience pertaining to the authorization of the electronic  
28 transmission of insurance renewals, including, an offer of renewal  
29 required by Sections 663 and 678, the notice of conditional renewal  
30 required by Section 678.1, the offer of coverage or renewal or any  
31 disclosure required by Section 10086, and the offer of renewal for  
32 a workers' compensation policy, as authorized by this section.

33 (e) Notwithstanding paragraph (4) of subdivision (b) of Section  
34 1633.3 of the Civil Code, for any policy of life insurance, as  
35 defined in Section 101, any statutory requirement for a separate  
36 acknowledgment, signature, or initial, which is not expressly  
37 prohibited by subdivision (c) of Section 1633.3 of the Civil Code,  
38 may be transacted using an electronic signature, or by electronic  
39 transaction, subject to all applicable provisions of this section.

(f) The department may suspend a licensee from providing records by electronic transmission if there is a pattern or practices that demonstrate the licensee has failed to comply with the requirements of this section. A licensee may appeal the suspension and resume its electronic transmission of records upon communication from the department that the changes the licensee made to its process or system to comply with the requirements of this section are satisfactory.

(g) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

SEC. 7. Section 38.6 is added to the Insurance Code, to read:

38.6. (a) (1) Any written record required to be given or mailed to any person by a licensee, including an offer of renewal required by paragraph (1) of subdivision (a) of Section 663 and Section 678, the notice of policy change or cancellation requested by the insured as required by Section 667.5, the offer of coverage or renewal or any disclosure required by paragraph (1) of subdivision (a) of Section 10086, *and* the offer of renewal for a workers' compensation policy, ~~or any written record required to be given or mailed to any person by a licensee relating to the business of life insurance, as defined in Section 101 of this code~~ *policy* may, if not excluded by subdivision (b) or (c) of Section 1633.3 of the Civil Code, be provided by electronic transmission pursuant to Title 2.5 (commencing with Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each party has agreed to conduct the transaction by electronic means pursuant to Section 1633.5 of the Civil Code, and if the licensee complies with the provisions of this section. A valid electronic signature shall be sufficient for any provision of law requiring a written signature.

(2) For purposes of this section, the definitions set forth in Section 1633.2 of the Civil Code shall apply. The term "licensee" means an insurer, agent, broker, or any other person who is required to be licensed by the department.

(3) Notwithstanding subdivision (1) of Section 1633.2 of the Civil Code, for purposes of this section, "person" includes, but is not limited to, the policy owner, policyholder, applicant, insured, or assignee or designee of an insured.

(b) In order to transmit a record listed in subdivision (a) electronically, a licensee shall comply with all of the following:

1 (1) A licensee, or licensee's representative, acquires the consent  
2 of the person to opt in to receive the record by electronic  
3 transmission, and the person has not withdrawn that consent, prior  
4 to providing the record by electronic transmission. A person's  
5 consent may be acquired verbally, in writing, or electronically. If  
6 consent is acquired verbally, the licensee shall confirm consent in  
7 writing or electronically. The licensee shall retain a record of the  
8 person's consent to receive the record by electronic transmission  
9 with the policy information so that it is retrievable upon request  
10 by the department while the policy is in force and for five years  
11 thereafter.

12 (2) A licensee discloses, in writing or electronically, to the  
13 person all of the following:

14 (A) The opt in to receive the record by electronic transmission  
15 is voluntary.

16 (B) That the person may opt out of receiving the record by  
17 electronic transmission at any time, and the process or system for  
18 the person to opt out.

19 (C) A description of the record that the person will receive by  
20 electronic transmission.

21 (D) The process or system to report a change or correction in  
22 the person's email address.

23 (E) The licensee's contact information, which includes, but is  
24 not limited to, a toll-free number or the licensee's Internet Web  
25 site address.

26 (3) The opt-in consent disclosure required by paragraph (2) may  
27 be set forth in the application or in a separate document that is part  
28 of the policy approved by the commissioner and shall be bolded  
29 or otherwise set forth in a conspicuous manner. The person's  
30 signature shall be set forth immediately below the opt-in consent  
31 disclosure. If the licensee seeks consent at any time prior to the  
32 completion of the application, consent and signature shall be  
33 obtained before the application is completed. If the person has not  
34 opted in at the time the application is completed, the licensee may  
35 receive the opt-in consent at any time thereafter, pursuant to the  
36 same opt-in requirements that apply at the time of the application.  
37 The licensee shall retain a copy of the signed opt-in consent  
38 disclosure with the policy information so that each is retrievable  
39 upon request by the department while the policy is in force and  
40 for five years thereafter.

1 (4) The email address of the person who has consented to  
2 electronic transmission shall be set forth on the consent disclosure.  
3 In addition, if the person who consented receives an annual  
4 statement, the email address of the person who has consented shall  
5 be set forth on that record.

6 (5) The licensee shall annually provide one free printed copy  
7 of any record described in this subdivision upon request by the  
8 person.

9 (6) If a provision of this code requires a licensee to transmit a  
10 record by first-class mail, regular mail, does not specify a method  
11 of delivery, or is a record that is required to be provided pursuant  
12 to Article 6.6 (commencing with Section 791), and if the licensee  
13 is not otherwise prohibited from transmitting the record  
14 electronically under subdivision (b) of Section 1633.8 of the Civil  
15 Code, then the record may be transmitted by electronic transmission  
16 if the licensee complies with all of the requirements of Sections  
17 1633.15 and 1633.16 of the Civil Code.

18 (7) If the record is not delivered directly to the electronic address  
19 designated by the person but placed at an electronic address  
20 accessible to the person, a licensee shall notify the person in plain,  
21 clear, and conspicuous language at the electronic address  
22 designated by the person that describes the record, informs that  
23 person that it is available at another location, and provides  
24 instructions to the person as to how to obtain the record.

25 (8) (A) Upon a licensee receiving information indicating that  
26 the record sent by electronic transmission was not received by the  
27 person, the licensee shall, within five business days, comply with  
28 either clause (i) or (ii):

29 (i) Contact the person to confirm or update the person's email  
30 address and resend the record by electronic transmission. If the  
31 licensee elects to resend the record by electronic transmission, the  
32 licensee shall demonstrate the transmission was received by the  
33 person, pursuant to paragraph (6). If the licensee is unable to  
34 confirm or update the person's email address, the licensee shall  
35 resend the record by regular mail to the licensee at the address  
36 shown on the policy, or, if the underlying statute requires delivery  
37 in a specified manner, send the record in that specified manner.

38 (ii) Resend the record initially provided by electronic  
39 transmission by regular mail to the insured at the address shown

1 on the policy, or, if the underlying statute requires delivery in a  
2 specified manner, send the record in that specified manner.

3 (B) If the licensee sends the first electronic record within the  
4 time period required by law and the licensee complies with both  
5 paragraph (5) and subparagraph (A) of this paragraph, the record  
6 sent pursuant to clause (i) or (ii) of subparagraph (A) shall be  
7 treated as if mailed in compliance with the applicable statutory  
8 regular mail delivery deadlines.

9 (9) The licensee shall not charge any person who declines to  
10 opt in to receive a record through electronic transmission from  
11 receiving a record electronically. The licensee shall not provide a  
12 discount or an incentive to any person to opt in to receive electronic  
13 records.

14 (10) The licensee shall verify a person's email address via paper  
15 writing sent by regular mail when more than 12 months have  
16 elapsed since the licensee's last electronic communication.

17 (c) An insurance agent or broker acting under the direction of  
18 a party that enters into a contract by means of an electronic record  
19 or electronic signature shall not be held liable for any deficiency  
20 in the electronic procedures agreed to by the parties under that  
21 contract if all of the following are met:

22 (1) The insurance agent or broker has not engaged in negligent,  
23 reckless, or intentional tortious conduct.

24 (2) The insurance agent or broker was not involved in the  
25 development or establishment of the electronic procedures.

26 (3) The insurance agent or broker did not deviate from the  
27 electronic procedures.

28 (d) Notwithstanding paragraph (4) of subdivision (b) of Section  
29 1633.3 of the Civil Code, for any policy of life insurance, as  
30 defined in Section 101, any statutory requirement for a separate  
31 acknowledgment, signature, or initial, which is not expressly  
32 prohibited by subdivision (c) of Section 1633.3 of the Civil Code,  
33 may be transacted using an electronic signature, or by electronic  
34 transaction, subject to all applicable provisions of this section.

35 (e) The department may suspend a licensee from providing  
36 records by electronic transmission if there is a pattern or practices  
37 that demonstrate the licensee has failed to comply with the  
38 requirements of this section. A licensee may appeal the suspension  
39 and resume its electronic transmission of records upon  
40 communication from the department that the changes the licensee

1 made to its process or system to comply with the requirements of  
2 this section are satisfactory.

3 *(f) This section does not apply to a written record that is*  
4 *required to be given or mailed to any person by a licensee and*  
5 *that relates to the business of life insurance, as defined in Section*  
6 *101.*

7 *(g) A notice of lapse, nonrenewal, cancellation, or termination*  
8 *required by a section of this code that is excluded by subdivision*  
9 *(b) or (c) of Section 1633.3 of the Civil Code may be transmitted*  
10 *electronically if it is also transmitted by mail, as prescribed by*  
11 *statute.*

12 ~~(f)~~

13 *(h) This section shall become operative on January 1, 2021.*